

No. 10849

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

AMELIA E. COLLINS, RESPONDENT

ON PETITION FOR REVIEW OF THE DECISION OF THE TAX
COURT OF THE UNITED STATES

BRIEF FOR THE PETITIONER

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(I)

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OPINION BELOW

The memorandum opinion of the Tax Court is unreported. It is set forth in the record at pages 8-12.

JURISDICTION

This petition for review (R. 20-22) involves an asserted deficiency in income tax for the taxable year 1939. The notice of deficiency is dated December 19, 1941 (R. 4-6), and the taxpayer's petition for redetermination (R. 1-3) was filed with the Board of Tax Appeals (now the Tax Court of the United States) on February 2, 1942, under the provisions of Section 272 of the Internal Revenue Code. The decision of the Tax Court determining that there was an overpayment in income tax for the year 1939 in the amount of

\$191.52 was entered on April 26, 1944. (R. 12-13.) The case is brought to this Court by a petition for review filed by the Commissioner of Internal Revenue on July 12, 1944 (R. 20-22), pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

QUESTION PRESENTED

The taxpayer was the executrix and sole distributee of the assets of her husband's estate. After distribution of all the assets, taxpayer paid a deficiency in estate tax plus interest thereon. Is the taxpayer, in computing her own income tax liability, entitled to a deduction under Section 23 (b) of the Internal Revenue Code for the interest so paid?

STATUTES INVOLVED

The relevant provisions of the statutes involved are set forth in the Appendix, *infra*, pp. 10-11.

STATEMENT

The facts, as stipulated by the parties and found by the Tax Court, may be summarized as follows:

Taxpayer, a resident of Los Angeles County, California, on March 15, 1940, filed her individual income tax return for the year 1939 with the Collector of Internal Revenue at Los Angeles, California. (R. 8.)

Taxpayer's husband, Thomas H. Collins, died a resident of Los Angeles County, California, on June 3, 1937, and his will was duly admitted to probate. On July 20, 1937, taxpayer was appointed, and qualified, as executrix of the estate; she has not been discharged as executrix, and the probate files in the matter of the estate have not been closed. (R. 8.)

The terms of the will directed the payment of debts, expenses of last sickness and funeral expenses, and devised and bequeathed all the residue of the estate to taxpayer, the surviving widow. (R. 8-9.)

The appraised value of the assets of the estate was \$1,524,622.43. The amount of federal estate tax liability was eventually and finally determined to be \$199,400.97, after credit for state estate, inheritance, legacy or succession taxes. (R. 9.)

On February 28, 1938, the Superior Court, on petition of the executrix, ordered a distribution of certain property which previously had been appraised at \$902,068.69, and the distribution of that property was thereupon made to taxpayer. On April 14, 1938, on order of the Superior Court, another distribution of property, appraised at \$374,949.33, was made to taxpayer. (R. 9.)

On July 20, 1938, the Superior Court approved the first and final account, report and petition for distribution filed by the executrix, in which account she was charged with certain receipts and given credit for certain disbursements, including the above distributions, leaving for distribution a balance of \$140,772.82, which distribution was made to taxpayer by the order. (R. 9.)

On September 1, 1938, taxpayer, as executrix, filed the federal estate tax return of the estate of Thomas H. Collins, deceased, with the Collector of Internal Revenue at Los Angeles, California. The return disclosed a tax liability of \$89,400.97, which was promptly paid. (R. 10.)

In due course, a revenue agent in the office of the Internal Revenue Agent in Charge, at Los Angeles, California, examined the return and proposed a deficiency in estate tax in the amount of \$130,116.66. (R. 10.)

On October 20, 1939, taxpayer paid to the Collector at Los Angeles, \$129,500 of the proposed deficiency, plus interest thereon in the amount of \$8,779.39, or a total of \$138,279.39, leaving unpaid \$616.66 of the proposed deficiency. This payment was made by a check drawn by taxpayer against an account at the Santa Monica Branch of Security-First National Bank of Los Angeles, carried under the name of Mrs. Amelia E. Collins, as an individual. The check was paid by the bank on October 25, 1939. (R. 10.)

On January 24, 1940, the Commissioner of Internal Revenue, by registered mail, sent to Amelia E. Collins, executrix of the estate of Thomas H. Collins, deceased, notice of a deficiency in estate tax in the amount of \$616.66. A petition was duly filed with the United States Board of Tax Appeals wherein Amelia E. Collins, as executrix, alleged that the estate tax had been overpaid. On May 9, 1941, the Board entered its decision that there was an overpayment in estate tax in the amount of \$19,500. (R. 10-11.)

Pursuant to the Board's decision there was issued to Amelia E. Collins, executrix under the will of Thomas H. Collins, deceased, under date of August 8, 1941, a certificate of overassessment, in the principal amount of \$20,821.99 (\$19,500 plus \$1,321.99 interest). Under date of September 30, 1941, there was issued a

Treasury check in the amount of \$23,208.25, payable to Amelia E. Collins, executrix under the will of Thomas H. Collins, deceased, refunding \$19,500 of the estate tax previously paid and \$1,321.99 representing interest erroneously paid thereon, and making payment of \$2,386.26 representing interest due the estate on the amounts so refunded. This check was deposited by taxpayer in her individual commercial account with the Security-First National Bank of Los Angeles, on October 15, 1941. (R. 11.)

The taxpayer's individual income tax return for the taxable year 1939 showed net income of \$6,633.64, which was arrived at by subtracting from a reported gross income of \$23,043.55, claimed deductions amounting to \$16,409.71. Of the claimed deductions, \$8,779.39 was deducted as interest paid to the Collector of Internal Revenue on October 20, 1939, on the estate tax deficiency. The taxpayer conceded that the sum of \$8,779.39 was reduced to \$7,457.47 by a refund of \$1,321.99 of the interest previously paid. (R. 11-12.)

The aggregate fair market value of the assets of the estate of Thomas H. Collins distributed to the taxpayer was, at the respective times of distribution of the estate described above, substantially in excess of the amount of the total federal estate tax liability of the decedent's estate. No portion of the estate tax was due or payable at or prior to the last of such distributions. (R. 11.)

On the basis of its decision in *Green v. Commissioner*, 3 T. C. 74 (subsequently reversed in 148 F. 2d 157 (C. C. A. 9th), and 146 F. 2d 352 (C. C. A. 8th)),

the Tax Court determined that the taxpayer was entitled, under Section 23 (b) of the Internal Revenue Code, to deduct the amount of interest on the estate tax deficiency which was actually paid (\$7,457.47). (R. 12.)

STATEMENT OF POINTS TO BE URGED

The assignments of error which are relied on by the Commissioner as the basis for this proceeding are set forth on pages 20 and 21 of the record. They may be summarized by a statement that the Tax Court erred in holding that the taxpayer is entitled to the claimed deduction.

SUMMARY OF ARGUMENT

This case is indistinguishable from and is governed by the decision of this Court in *Commissioner v. Green*, 148 F. 2d 157. Accordingly, it is clear that in paying interest on the estate tax deficiency, taxpayer did not pay any interest on her own indebtedness and is not entitled to any deduction under Section 23 (b) of the Internal Revenue Code.

ARGUMENT

The taxpayer did not pay interest on her own indebtedness and is not entitled to the claimed deduction

We believe that the present case is governed in all respects by the decision of this Court in *Commissioner v. Green*, 148 F. 2d 157. Accordingly, no extended discussion of applicable principles is necessary to demonstrate that the decision of the Tax Court is erroneous and is required to be reversed.

Except in immaterial respects, the facts of this case are identical with those of *Commissioner v. Green, supra*. In each case a deficiency in estate tax was determined subsequent to the distribution of all the assets of the estate. In each case the taxpayer, who was a distributee of those assets¹ and who also served as executor, paid the estate tax deficiency together with interest thereon.² In each case the amount of the assets of the estate at the time of distribution exceeded the amount of the total estate tax and interest thereon. The ruling of the Tax Court in both cases was identical, namely, that Section 900 of the Internal Revenue Code (Appendix, *infra*) imposes a personal liability on a transferee to the extent that when he pays a tax asserted against his transferor he is paying his own tax and that the interest thereon is interest on his own indebtedness and deductible under Section 23 (b), of the Internal Revenue Code (Appendix, *infra*) in the computation of his own tax liability.³ The decision of this Court in *Commissioner v. Green, supra*, expressly repudiated this reasoning and, instead, held that Section 900 and similar provisions of prior Revenue Acts merely added to the

¹ In the present case the taxpayer received the entire residuary estate after payment of debts and expenses; in the *Green* case the taxpayer received one-half of the residuary estate.

² In the *Green* case, the taxpayer only paid one-half of the deficiency and interest, the other half being paid by the other residuary beneficiary of the estate.

³ The reasoning of the Tax Court is set forth in *Green v. Commissioner*, 3 T. C. 74; the Tax Court decided the present case by relying on its own decision in the *Green* case, *supra*.

Commissioner's means of collecting the tax by following the property, but did not create any new tax entities. Accordingly, the taxpayer here, as transferee of the assets of the decedent's estate, in paying the estate tax deficiency and interest thereon was merely disgorging property which she was not entitled to keep as against creditors of her husband's estate. She was in no manner paying any tax liability or indebtedness of her own and was not paying any interest on her own tax liability or indebtedness deductible under Section 23 (b).

The taxpayer argued, in the alternative, before the Tax Court, as did the taxpayer on appeal in the *Green* case, *supra*, that Section 3467 of the Revised Statutes (Appendix, *infra*), imposed a tax liability on her, as executrix, for having paid over the assets of the estate to herself before satisfying the estate tax in full. Accordingly, it was contended that the taxpayer, in paying interest on the deficiency, had paid interest on her own indebtedness which was deductible under Section 23 (b).

This argument, too, was rejected by this Court in *Commissioner v. Green*, *supra*. While, as set forth at length in our reply brief in the *Green* case, it is the Commissioner's contention that Sections 3466 and 3467 of the Revised Statutes (Appendix, *infra*) do not impose any tax liability on the executor, it is no more necessary to decide this question in its broadest aspects here than it was in the *Green* case, for here, as there, no proceedings were instituted against the taxpayer under Section 3467; the taxpayer did not

even purport to pay the deficiency in her capacity as executrix (R. 18); and there is nothing to show that the estate tax claims of the Government were prejudiced or jeopardized when the taxpayer, as executrix, transferred to herself, as residuary legatee, assets which greatly exceeded the Government's tax claim. In this respect, it may be noted that the view which this Court took with respect to Section 3467 was also adopted by the Circuit Court of Appeals for the Fifth Circuit in *Commissioner v. Henderson's Estate*, 147 F. 2d 619, 620.

The fact that the executors in the *Green* and *Henderson* cases, *supra*, had been discharged, while the taxpayer here had not been, is an immaterial variation in facts since the executor's liability under Section 3467 of the Revised Statutes is not affected by his discharge. *United States v. Weisburn*, 48 F. Supp. 393, 397 (E. D. Pa.); *Beasley v. Commissioner*, 42 B. T. A. 275; *Evans v. Commissioner*, 12 B. T. A. 334.

It follows that the taxpayer is not entitled to the deduction allowed by the Tax Court.

CONCLUSION

The decision of the Tax Court is erroneous and should be reversed.

Respectfully submitted.

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AUGUST 1945.

APPENDIX

Internal Revenue Code:

SEC. 23. *Deductions from Gross Income.*

In computing net income there shall be allowed as deductions:

* * * * *

(b) *Interest.*—All interest paid or accrued within the taxable year on indebtedness, * * *

* * * * *

(26 U. S. C. 1940 ed., Sec. 23.)

SEC. 900. TRANSFERRED ASSETS.

(a) *METHOD OF COLLECTION.*—The amounts of the following liabilities shall, except as herein-after in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this subchapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *TRANSFEREES.*—The liability, at law or in equity, of a transferee of property of a decedent, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this subchapter.

(2) *FIDUCIARIES.*—The liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, Sec. 192) in respect of the payment of any such tax from the estate of the decedent.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

* * * * *

(e) DEFINITION OF "TRANSFeree."—As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. (26 U. S. C. 1940 ed., Sec. 900.)

Revised Statutes of the United States:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (31 U. S. C. 1940 ed., Sec. 191.)

SEC. 3467 [as amended by the Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 518 (a)]. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (31 U. S. C. 1940 ed., Sec. 192.)

